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What is Chapter 104, the public works law?

Chapter 104, HRS, is the wage and hour law on State and county public works construction. Major requirements of the law include the payment of prevailing wages and overtime to laborers and mechanics working on the project; submission of weekly certified payrolls; record keeping; and posting and notification to employees of the prevailing wage rates.

What does Chapter 104 cover?

Every public works construction project over \$2,000, involving a State or county governmental contracting agency, is covered, whether it is in the form of a contract awarded through a formal bid process, purchase order, voucher, or lease arrangement. Warranty work performed by a contractor/subcontractor is covered, whereas, warranty work performed by a manufacturer on defective products or equipment is not covered. The law applies to work performed at the public work job site by any laborer or mechanic, including owner-operators. It also applies to transporting of materials, supplies or equipment:

- a) to or from a public work site, or
- b) between a public work site and another public work site or a dedicated site, when performed by a laborer or mechanic employed at the job site.

What is a “prevailing wage”?

The prevailing wage is the basic hourly rate and the cost to an employer of providing a laborer or mechanic with fringe benefits.

Example – Computing Prevailing Wage:

Basic hourly rate: \$28.30

Fringe benefit: +12.05

Prevailing wage: \$40.35

What is prevailing area practice?

Prevailing area practice refers to the classification of work used by contractors whose wage rates were found to be prevailing in the area and published in the [wage rate schedule](#). If the Department of Labor and Industrial Relations (DLIR) determines that the prevailing wage for a particular trade is derived from a collective bargaining agreement, the DLIR is responsible to ensure that the work performed by a laborer or mechanic is classified according to the job content upon which the wage rates are based. Accordingly, all contractors performing work in

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the particular trade will be required to use the appropriate job classification and pay the applicable prevailing wage. For prevailing area practice information, contact the Wage Standards Division of the DLIR.

How is the appropriate job classification determined?

A contractor must identify the appropriate classification from the applicable [wage rate schedule](#) for all work to be performed by laborers and mechanics on the project. Proper classification must conform to prevailing area practice.

What wages are required by Chapter 104?

A contractor must pay the minimum prevailing wages for each class of laborers and mechanics on State or county public works construction projects, as determined by the Director of Labor and published in the [wage rate schedules](#).

What is a certified payroll?

A copy of the weekly payroll which the contractor has signed to affirm that:

- the payroll is correct and complete;
- the job classifications conform with the work performed by the laborer or mechanic; and
- wages paid are not less than the applicable rates contained in the wage rate schedule.

Certified payrolls must be submitted weekly to the governmental contracting agency. The general contractor is responsible for submitting the certified payrolls of all subcontractors.

What information should be on a certified payroll?

Certified payroll records for each laborer and mechanic working on the job site must contain the following:

- name and home address
- correct job classification as shown on the Wage Rate Schedule
- rate of pay and fringe benefits
- daily and weekly number of hours worked
- total straight-time, overtime, and gross earnings for each week
- amount and purpose of each deduction
- net wages paid, and date of payment

There is no standard form required for certified payrolls. Any form, including the federal form WH-347, is acceptable as long as it includes all of the required information above, and is certified. You may obtain a copy of form WH-347 on the internet at

<http://www.dol.gov/esa/forms/whd/wh347instr.htm>.

What is a wage rate schedule?

A wage rate schedule is a publication of job classifications and corresponding wage rates determined by the Director of Labor to be

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prevailing based on surveys of the construction industry and determinations made by the United States Department of Labor. The schedules are issued on or about February 15 and September 15 of each year. To obtain the most current wage rate schedule, www.loihi.state.hi.us.

What is a fringe benefit?

A fringe benefit is a contribution irrevocably made by a contractor to a trustee or to a third person according to a fund, plan or program in providing benefits to a laborer or mechanic, such as medical, insurance and pension.

Example of how to compute hourly fringe benefit credit:

The monthly contribution/premium paid to a medical plan is \$320.05.
 $\$320.05 \div 173$ (avg. number of hrs/mo.)= \$1.85 per hour credit
Prevailing wage: \$40.35
Hourly credit for medical fringe benefit: -1.85
Hourly rate due: \$38.50

When must overtime be paid under Chapter 104?

Overtime must be paid for all hours worked on:

- Saturday
- Sunday
- a legal State holiday; or
- more than 8 hours on any other day whether worked on one or more projects

How is overtime computed?

Overtime must be paid at 1½ times the basic hourly rate, plus fringe benefits.

EXAMPLE - OVERTIME

Basic hourly rate:	\$28.30	
	x 1.5 =	\$42.45
Add fringe benefit:		+12.05
Overtime rate:		\$54.50

On which holidays must overtime be paid?

Contractors must pay **overtime** for work done on these legal State holidays:

January 1	-----	New Year's Day
January – Third Monday	-----	Martin Luther King, Jr. Day
February – Third Monday	-----	Presidents' Day
March 26	-----	Prince Kuhio Day
Friday before Easter Sunday	-----	Good Friday
May – Last Monday	-----	Memorial Day
June 11	-----	King Kamehameha Day

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July 4 -----Independence Day
August – Third Friday ----- Admission Day
September – First Monday ----- Labor Day
November 11 ----- Veterans' Day
November – Fourth Thursday ----- Thanksgiving Day
December 25 ----- Christmas Day

In addition, overtime must be paid for:

- All election days, except primary and special election days, in the county where the election is held.
- Any day that the President or Governor proclaims as a holiday.

How often do laborers and mechanics have to be paid?

They must be paid weekly and within five working days after the end of the pay period.

What is the difference between the State and the federal public works laws?

- State law (**Chapter 104**--sometimes called "Little Davis-Bacon") applies to work done on State and county construction projects.
- Federal law (**Davis-Bacon Act**) applies to work done on federal construction projects.

Does Chapter 104 apply if federal funds are used?

Yes, if the State or a county is the contracting agency.

What is the difference between construction and supply or maintenance contracts in regard to Chapter 104?

Public works construction projects are subject to Chapter 104. Supply and service contracts are covered by Chapter 103, HRS, but may also be subject to Chapter 104 if the activity is part of a construction contract or project, or if *substantial* construction work is involved. (Refer to chart on page 2 – "Determination of Coverage")

How should job classifications be shown on certified payrolls?

Certified payrolls must show the specific job classification as listed in the [wage rate schedule](#), which conform with the work performed by the laborer or mechanic on the job site.

Examples: Equipment Operator (Group No.), Laborer I or II, and Roofer Apprentice (level, percentage, or step).

What can be done when there seems to be no appropriate job classification in the wage rate schedule for the work performed on the project?

The contractor is required to use the closest existing classification in the applicable wage rate schedule. The contracting agency should be consulted when there seems to be no appropriate class. If there is disagreement on the appropriate class, a written request may be

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submitted to the Director of Labor and Industrial Relations by the governmental contracting agency or any interested party. The written request should include:

- project name and number
- contracting agency
- specific duties or the work performed
- type(s) of materials specified
- tools used for performing the work
- a recommendation from the contracting agency or the contractor about what the proper classification should be.

Does a contractor have to provide a wage rate schedule to each laborer and mechanic?

The contractor is required to give a **complete** copy to each laborer and mechanic employed on the project, except for employees covered by a collective bargaining agreement. Applicable wage rate schedules must also be posted by the contractor at the job site.

Does the law allow “summer hires” or “helpers”?

No. The “summer hire” classification is not recognized under Chapter 104. If a contractor hires any temporary summer help, these workers must be classified and paid according to the work performed, using the closest existing job classification in the wage rate schedule. Only the helper classifications listed in the wage rate schedule are allowed.

When can a contractor use apprenticeship/trainee wage rates?

Apprentice or trainee wage rates shown in the wage rate schedule apply only to:

- (1) apprentices/trainees in programs registered with or recognized by the Workforce Development Division of the DLIR, and
- (2) the number of apprentices or trainees within the allowable ratio to journeyworkers for the same craft classification on any public works project.

However, a registered or recognized apprentice receiving the journeyworker wage will not be considered a journeyworker to meet the ratio requirements for another apprentice.

What is the “applicable” prevailing wage?

The applicable prevailing wage is determined by proper classification. A contractor/subcontractor is required to classify every laborer or mechanic on the project in the closest existing classification listed in the applicable wage rate schedule.

If there is an increase in the prevailing wage, is the contractor required to increase the wages of laborers and mechanics

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engaged in the performance of the contract on the job site?

Yes, whenever the Director of Labor determines that the prevailing wage has increased as shown in the wage rate schedule, the contractor must increase the wages accordingly.

Does a contractor need a breakdown of the fringe benefit rate in the wage rate schedule?

No, because the contractor may pay any combination of allowable fringe benefits in order to meet the prevailing wage.

How can a contractor meet the prevailing wage requirement?

A contractor can pay any of the following combinations of the basic hourly rate and fringe benefits, which must be not less than the prevailing wage total reflected in the wage rate schedule:

- (a) By paying the basic hourly rate and by making contributions for the fringe benefits in the amount specified in the wage rate schedule;
- (b) By paying the basic hourly rate and an additional cash payment in lieu of the fringe benefits directly to the laborer or mechanic; or
- (c) By paying an hourly rate, partly in cash and partly in fringe benefits.

How can a contractor take credit for allowable fringe benefits?

The contractor may take credit for contributions paid for benefits such as a medical plan or insurance policy. The allowable hourly fringe benefit credit is determined by dividing the monthly contribution rate by 173 hours (average straight-time hours per month). Since the hourly credit for fringe benefits is based on straight time hours, credit may not be applied to overtime.

If warranty work is covered under Chapter 104, what is the applicable prevailing wage?

Prevailing wages in the most current wage rate schedule must be paid.

How long should certified and original payroll records be kept?

All records must be maintained throughout the project, and kept for 3 years after completion of the project.

Who enforces Chapter 104?

The governmental contracting agency and the DLIR share joint enforcement

What can a governmental contracting agency do if a contractor violates Chapter 104?

The governmental contracting agency may:

- withhold payments to the contractor;
- terminate the contractor's right to continue work. If this action

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is required, the contractor and the contractor's bonding company are liable to the governmental contracting agency for any excess costs;

- refer the matter to the Wage Standards Division of the DLIR for investigation;
- within 60 days of a determination made by the Director of Labor either:

- (1) order any contractor to pay back wages found due directly to laborers and mechanics and pay the Director of Labor and Industrial Relations any penalty assessed;
- (2) pay directly to laborers and mechanics any wages found due and pay the Director of Labor any penalty assessed; or
- (3) pay the Director of Labor the total amount of back wages or penalties, or both.

What are the penalties if a contractor violates Chapter 104?

Under Act 251 (L 1999), effective July 2, 1999:

- First Violation Equal to 10% of back wages found due or \$25 per offense, whichever is greater.
- Second Violation Equal to amount of back wages found due or \$100 for each offense, whichever is greater.
- Third Violation Equal to two times the amount of back wages found due or \$200 for each offense, whichever is greater; and
Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the first NOV, and a third violation if it occurs within two years of the second notification of violation.
- Suspension. For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.